

CONFIDENTIAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | | |
|-----------------------------|---|----------------------------------|
| TURNER NETWORK SALES, INC., |) | |
| |) | |
| <i>Plaintiff,</i> |) | |
| |) | |
| v. |) | Civil Action No. 17-CV-7599 (RA) |
| |) | |
| DISH NETWORK L.L.C., |) | |
| |) | |
| <i>Defendant.</i> |) | |
| |) | |

DECLARATION OF RICHARD J. WARREN

I, RICHARD J. WARREN, declare and state as follows:

1. I am the President of Turner Network Sales, Inc. (“TNS”). I am over 18 years of age and competent to give this declaration. The following facts are based on my personal knowledge.

2. As President of TNS, I oversee all brand distribution, affiliate marketing, interactive television, and business development for the domestic entertainment, news, and children’s television programming services of Turner Broadcasting System, Inc. (“TBS, Inc.”). TNS is a subsidiary of TBS, Inc. I also have oversight of TNS’s strategic planning, business operations, and legal and business affairs. I have held that position since June 2017.

3. Prior to becoming President, I worked as Executive Vice President, Content Negotiations and Strategy, and Associate General Counsel for TNS. In that role, I led the company’s efforts in structuring and negotiating TNS’s linear and digital content agreements with its distribution partners, as well as oversaw the strategic planning, operations, distribution technology, and legal and business affairs teams. Since October 2000, I have held various roles within TNS’s legal and business affairs group.

CONFIDENTIAL

4. TNS, among other things, is in the business of promoting, licensing, and distributing TBS, Inc.'s television programming services, including the programming services known as Cable News Network ("CNN"), HLN, The Cartoon Network ("Cartoon Network"), Turner Classic Movies ("TCM"), Boomerang, CNN International ("CNNI"), Turner Network Television ("TNT"), TBS, CNN en Español ("CNNe"), truTV, and until the end of 2016, hTV (collectively, the "Services" and each individually, a "Service"). TNS enters into multi-year contracts with multi-channel video programming distributors and other content distributors (collectively "Distributors"), pursuant to which TNS grants those Distributors rights to distribute TBS, Inc.'s video content to consumers through various platforms, including, without limitation, cable systems and direct broadcast satellite systems. These contracts are referred to as "affiliation agreements." Over the years, TNS has entered into various affiliation agreements with DISH Network L.L.C. ("DISH") concerning the licensing and distribution of one or more of the Services.

5. On August 14, 2009, TNS entered into an affiliation agreement with DISH concerning the licensing and distribution of the Services CNN, HLN, Cartoon Network, TCM, Boomerang, CNNI, TNT, TBS, CNNe, and truTV (the "2009 Agreement"). The 2009 Agreement granted DISH certain rights to receive, promote, and distribute these Services to DISH's subscribers pursuant to the terms of the 2009 Agreement for a defined term. The term of the 2009 Agreement was extended in whole or in part on several occasions. A true and correct copy of excerpts of the 2009 Agreement are attached hereto as Exhibit 1.

6. On April 1, 2015, TNS entered into a new affiliation agreement with DISH concerning the licensing and distribution of CNN, HLN, Cartoon Network, TCM, Boomerang, CNNI, TNT, TBS, CNNe, truTV, and hTV. The 2015 Agreement, which superseded the 2009

CONFIDENTIAL

Agreement, granted DISH certain rights to receive, promote, and distribute the Services to DISH's subscribers during the term of the 2015 Agreement. The 2015 Agreement provided DISH a license to distribute the Services over both DISH's direct broadcast satellite ("DBS") System and its internet-based ("OTT") System (each a "System" and collectively, "Systems"). A true and correct copy of excerpts of the 2015 Agreement are attached hereto as Exhibit 2.

7. On April 1, 2015, the same day that TNS and DISH entered into the 2015 Agreement, TNS entered into a new affiliation agreement with DISH that granted DISH a license to distribute CNN, HLN, Cartoon Network, TCM, Boomerang, TNT, TBS, and truTV to the commercial airlines Delta Airlines and Virgin Atlantic for delivery to the airlines' passengers (the "Letter Agreement"). A true and correct copy of the Letter Agreement is attached hereto as Exhibit 3. On November 2, 2016, TNS and DISH amended the Letter Agreement. A true and correct copy of the amendment to the Letter Agreement is attached hereto as Exhibit 4.

8. In my role as Executive Vice President, Content Negotiations and Strategy, and Associate General Counsel for TNS, I was personally involved in the negotiation of affiliation agreements with various Distributors, including DISH. In particular, I participated in the negotiations of the 2009 Agreement, the 2015 Agreement, and the Letter Agreement. I executed the 2015 Agreement and the Letter Agreement on behalf of TNS.

9. As part of my responsibilities, I also have personal knowledge and participated in the negotiation of the affiliation agreement between TNS and DISH that was entered into in 2005 and was in effect prior to the 2009 Agreement (the "2005 Agreement"). Under the terms of 2005 Agreement, DISH was required to pay monthly license fees to TNS for the distribution of CNN by multiplying a rate specified in the 2005 Agreement by the number of DISH's total subscribers for that month (with certain exceptions).

CONFIDENTIAL

10. During the negotiations of the 2009 Agreement, DISH proposed a modification to the payment terms for the monthly license fees it paid TNS for the distribution of CNN. Specifically, DISH requested that it be permitted to pay TNS for the distribution of CNN each month based on the number of DISH subscribers who are authorized to receive CNN for that particular month (“CNN Subscribers”), rather than the number of DISH’s total subscribers for that month (“Total Subscribers”). Because the number of CNN Subscribers was frequently, if not always, less than the number of Total Subscribers, DISH’s request would have involved a reduction in the amount of monthly license fees that DISH would pay for the distribution of CNN. In response to DISH’s request, TNS proposed that DISH pay for the distribution of CNN based on the number of CNN Subscribers rather than Total Subscribers only if no other 24-hour per day national news service was received by more Total Subscribers than CNN. Otherwise, DISH would be required to pay for CNN based on the number of DISH’s Total Subscribers. After the negotiation of some additional language that provided for certain exceptions concerning two news services, HLN and Fox News Channel, the parties agreed to this provision and the parties incorporated the language into Schedule B to the 2009 Agreement.

11. As a part of my responsibilities in my previous role as Executive Vice President, Content Negotiations and Strategy, of TNS and my current role as President, I have personal knowledge of CNN’s programming and the market in which CNN competes for viewers and advertisers. At the time of the 2009 negotiations and through the present day, CNN has operated in a very competitive market for viewership and for advertisers. The intent behind including the “24-hour per day national news service” provision in the 2009 Agreement was to incent DISH to distribute CNN to at least as many subscribers as any other news service.

CONFIDENTIAL

12. At the time of the 2009 negotiations and continuing through the present day, CNN has competed with various programming services, including all news services, for viewers and advertisers that purchase advertising time on CNN. During that entire time, TNS has considered The Weather Channel to be a 24 hour per day national news service that competes with CNN for viewers and advertisers that purchase advertising time on CNN. News services exhibit as a substantial part of their programming news, news-related and information programming. The Weather Channel exhibits news and information programming that focuses on weather.

13. In late 2014 and early 2015, TNS and DISH representatives negotiated the 2015 Agreement. During the course of those negotiations, the parties' discussions relating to the terms of payment for the distribution of CNN concerned the specific rates that would be paid on a per-subscriber basis. The parties did not discuss the provision in the 2009 Agreement that provided that DISH would pay for the distribution of CNN based on Total Subscribers if another 24-hour per day national news service was received by more Total Subscribers than CNN. Rather, the parties adopted and incorporated the language that addressed that concept nearly verbatim into Schedule C to the 2015 Agreement.

14. To my knowledge, from the beginning of the 2009 Agreement until May 2017, DISH never informed or represented to TNS that The Weather Channel did not constitute a 24-hour per day national news service under the terms of the 2009 Agreement or the 2015 Agreement. To the contrary, during the term of the 2009 Agreement, TNS's auditor informed TNS that DISH classified The Weather Channel as a news service and as a result paid for the distribution of CNN on the DBS System based on Total Subscribers. At that time, TNS confirmed to the auditor that The Weather Channel is a 24-hour per day national news service.

CONFIDENTIAL

I declare under penalty of perjury that the foregoing is true and correct.

This 15th day of October, 2018.

A handwritten signature in black ink, appearing to read 'Richard J. Warren', is written over a horizontal line.

RICHARD J. WARREN